

THE HONORABLE JAMES L. ROBART
SPECIAL MASTER MARK P. WALTERS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CALIFORNIA EXPANDED METAL
PRODUCTS COMPANY, a California
corporation; and CLARKWESTERN
DIETRICH BUILDING SYSTEMS LLC, dba
CLARKDIETRICH BUILDING SYSTEMS,
an Ohio limited liability company,

Plaintiffs,

v.

JAMES A. KLEIN, an individual;
BLAZEFRAME INDUSTRIES, LTD., a
Washington company; and SAFTI-SEAL,
INC., a Washington company,

Defendants.

Case No. 18-cv-00659-JLR

**REPORT AND
RECOMMENDATION RE:
PLAINTIFFS' MOTION TO FILE
OVER-LENGTH BRIEFS
PURSUANT TO LCR 7(F) AND
STIPULATED MOTION TO
BIFURCATE DAMAGES**

This matter comes before the Special Master on the following:


(1) Plaintiffs California Expanded Metal Products Company ("CEMCO") and Clarkwestern Dietrich Building Systems LLC's, d.b.a. ClarkDietrich Building Systems' ("ClarkDietrich") (collectively "Plaintiffs") Motion to File Over-Length Briefs Pursuant to LCR 7(f) Re: Plaintiffs' Motion for Contempt, and

(2) a stipulated motion to bifurcate issues related to damages that may be awarded should the Court find any party in contempt.

The Special Master, having considered the the Motion to File Overlength Brief, and

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CASE NO. 18-cv-00659

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pursuant to LCR 7(f), recommends that the Court grant the motion as follows.

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Plaintiffs' Reply Brief	20

The Special Master, having considered the stipulated motion to bifurcate issues related to damages, recommends as follows.

“[D]istrict courts, in their discretion, may bifurcate willfulness and damages issues from liability issues in any given case,” and they have “the authority to try these issues together or separately just as they have the authority to try all issues together at the liability stage.” *Robert Bosch, LLC v. Pylon Mfg. Corp.*, 719 F.3d 1305, 1319 (Fed. Cir. 2013). During the hearing held on June 25, 2021, for arguments on Plaintiffs’ motion to add non-parties to these contempt proceedings, the parties discussed the status of discovery related to damages, should non-parties be added to the contempt proceedings. (Hearing Transcript at 63:1-63:21.) During that hearing, it was mentioned that some discovery on the issue had been provided, but that because non-parties were not a part of the contempt proceedings at that time, that damages discovery from them had not been fully explored.

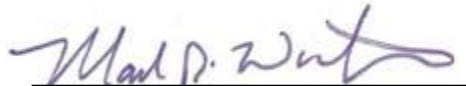
The parties and S4S, who has now been added to these contempt proceedings, submitted a stipulation to the Special Master on September 3, 2021, agreeing that “[t]he contempt motion [currently due September 8, 2021, Dkt. #238] will not address any claim of damages as supplementation of discovery related to damages will be required” and that “in the event that the Court finds contempt and permits damages, the Parties jointly request a schedule setting forth the deadlines for supplementation of written discovery on damages,

1 Plaintiffs' motion for damages, Defendants' opposition, and Plaintiffs' reply thereto."

2 In view of the discretion provided to district courts by the Federal Circuit to hear
3 issues related to damages separately from liability issues, *Robert Bosch*, 719 F.3d at 1319,
4 which the Special Master believes to be coextensive with the discretion to hear those issues
5 separately in contempt proceedings, and given the statements by the parties to these
6 contempt proceedings relating to status of discovery as of June 25, 2021 (i.e., that open
7 issues remained relating to damages discovery from non-parties, including S4S), and the
8 stipulation submitted on September 3, 2021, the Special Master recommends that the Court
9 grant the stipulated motion to bifurcate damages from liability during these contempt
10 proceedings.
11

12 It is recommended further that, should contempt be found, the parties to these
13 contempt proceedings shall be ordered to meet and confer within seven (7) days of any such
14 order and submit a joint status report setting forth the discovery sought on damages and a
15 proposed schedule within (14) days of any such order. If agreement on the proposed
16 schedule or discovery sought cannot be reached, the parties must clearly set forth any areas
17 of disagreement in the joint-report.
18

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20 Dated this 7TH day of September, 2021
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22
23 
24 Mark P. Walters
25 Special Master
26

CERTIFICATE OF SERVICE

I certify that on August 7, 2021, a copy of this pleading was filed electronically with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record via email.

/s/Rischel Voigt
Rischel Voigt, Paralegal